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Industry Circular



Internal Revenue Service

Alcohol, Tobacco and Firearms Division

Washington, D.C. 20224

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Industry Circular 69-17

LARGE CIGAR TAX RATE WHEN RETAIL PRICE CHANGES

Manufacturers of tobacco products:

A revenue ruling has been approved for publication in the Internal Revenue Bulletin which ruling sets forth the principles for determining the proper tax rate and class designation for large cigars when the retail price changes. Specifically, the ruling deals with cigars removed prior to the effective date of a retail price change which would result in a change in the tax rate. The ruling will read substantially as follows:

Questions have been asked about the proper tax determination and package class designation for large cigars removed subject to tax prior to the effective date of a change in the retail price which would result in a change in the tax rate imposed by section 5701, Internal Revenue Code of 1954.

Section 5701(a)(2) of the Code imposes a tax on large cigars at seven different rates based on the ordinary retail price at which the cigars are sold. Under section 5723 of the Code all cigars must be put up in packages that bear the required marks, labels, and notices. Implementing regulations in 26 CFR 270.214 and 275.73 require that packages of large cigars bear the appropriate tax class designation corresponding with the tax rate imposed on the cigars therein.

Under section 5701 of the Code the primary responsibility for determining the proper tax rate for large cigars is the manufacturer's or importer's. Therefore, it is his responsibility to know at the time of removal the price at which his cigars will ordinarily be sold at retail and to determine the tax rate accordingly. The following principles apply where there is a change in the retail price which will cause a change in the tax rate.

The cigars the manufacturer or importer believed would be sold at the old price and which were removed in good faith at the old tax rate, considering all information which was or should have been available to him at the time of removal, would be considered properly tax determined (and the packages bearing the proper class designation), even though some of these cigars might be sold at wholesale and retail at the new price.

Conversely, where the manufacturer or importer can reasonably know at the time of removal that cigars will be sold at retail at the new price, then the tax rate would be based on that new retail price, with the packages bearing the corresponding new class designation. This is true even if the removal takes place before the price change is announced or becomes effective. For example, price changes require advance planning; any cigars removed after the price-change decision is made which can logically be expected not to have been sold at retail before the retail price change becomes effective must be tax determined on the basis of the new retail price.

Any inquiries regarding this circular should be made to the office of your Assistant Regional Commissioner, Alcohol, Tobacco and Firearms.

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